



Rights of children in criminal proceedings under Directive (EU) 2016/800

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**RIGHTS OF CHILDREN IN CRIMINAL
PROCEEDINGS UNDER
DIRECTIVE (EU) 2016/800**

Art. 24(2) of the Charter already provides that *"In all actions relating to children (...) the child's best interests must always be a primary consideration."*

The Directive has drawn substantive inspiration from international standards, such as:

1. The UN Convention on the Rights of the Child (1989)
2. The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010)

Children's Rights in the Context of EU Law

Charter of Fundamental Rights of the European Union: article 24

Children's rights:

1. Specific protection and care
2. Express their views freely
3. Have their best interests taken as a primary consideration
4. Maintain a personal relationship and direct contact with parents
5. Receive free compulsory education
6. Prohibition of discrimination on the basis of age
7. Prohibition of exploitative child labour

The scope and content of the Directive

The Directive applies:

1. To children who are suspects or accused persons in criminal proceedings, until sentence and any appeal
2. To children who are requested persons from the time that an EAW is executed, although certain Articles do not apply in such circumstances
3. To children who are not initially a suspect or accused, but who become a suspect or accused person in the course of questioning by the police or other law enforcement authority

ARTICLE 1

Subject matter (Article 1)

Minimum rules concerning children who are suspects of accused or subject to an EAW

ARTICLE 2

Scope (Article 2)

A person who becomes subject to the proceedings below the age of 18
Minor offences, if a court has jurisdiction in criminal matters

The purpose of the Directive

Ensure effective protection throughout the EU of the rights of children who are suspected or accused of having violated the law

Establish procedural safeguards to ensure that children, meaning persons under the age of 18, who are suspects or accused persons in criminal proceedings, are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration

Age

If there is uncertainty as to whether the person has reached the age of 18, they should be presumed to be a child

Key points

Children have the **right of access to a lawyer** and the **right to be assisted by a lawyer**

Deprivation of liberty, and in particular detention, is imposed on children only as a last resort and for the shortest appropriate period

The directive also includes **other safeguards**, such as the right to:

- be promptly informed about their rights and about general aspects of the conduct of the proceedings;
- have information provided to a parent or another appropriate adult;
- be accompanied by that person during court hearings and at other stages of the proceedings;
- an individual assessment by qualified personnel;
- a medical examination if the child is deprived of liberty;
- protection of privacy during criminal proceedings;
- appear in person at trial;
- effective remedies.

Right to information

Member States must ensure that children are made aware that they are suspected or accused, and informed about their procedural rights in accordance with the Directive on the right to information (Directive 2012/13/EU).

Information must be provided in simple and accessible language , and the fact that the information has been provided must be recorded

Right to information (Article 4)

ARTICLE 4

About the rights set out in this Directive

Promptly or at the earliest appropriate stage in the proceedings

Simple and accessible language



RIGHTS TO INFORMATION TO
CHILDREN AND PARTIES WITH
PARENTAL RESPONSIBILITY FOR THEM

Information to holder of parental responsibility

Information that must be given to a child under Article 4 must also be given to the holder of parental responsibility as soon as possible

Children have the right to be accompanied by the person specified above during court proceedings and other stages of the process at which the child is present, which would include during police questioning

The Directive grants the holders of parental responsibility three main rights: to receive information, to accompany the child in criminal procedures and to request a medical examination.



ARTICLE 5

**Right of the child to have the holder
of parental responsibility
informed (Article 5)**

Information of the holder of parental
responsibility that the child has a right
to receive information



RIGHTS TO BE INFORMED OF THE RIGHTS
TO:

LEGAL ASSISTANCE

MEDICAL EXAMINATION

AUDIO-VISUAL RECORDING OF QUESTIONING

LIMITATIONS ON DEPRIVATION OF LIBERTY

PROTECTION OF PRIVACY

Legal assistance

The ECHR provides every person with the right to a fair trial and to legal assistance

The European Court of Human Rights has specifically underscored the importance of this right for children and found that it should be applied from the outset of the proceedings

Assistance by a lawyer shall include the right to meet in private and communicate with the lawyer, even before interrogation by the police, and it requires that the lawyer is able to assist and participate effectively

Right to a Lawyer

Article 6 provides for mandatory assistance by a lawyer from the earliest moment

Article 6 of the **Children Directive** requires Member States to ensure that a child suspect or accused person is assisted by a lawyer.

A child suspect or accused person has the right of access to legal assistance from the earliest moment in their criminal proceedings.

Children should be assisted by a lawyer 'without undue delay' once they are made aware that they are suspects or accused persons, including before they are questioned by the police or judicial authority, and following the deprivation of liberty

ARTICLE 6

Assistance by a lawyer (Article 6)

Before being questioned by the police

Upon the carrying out by investigating or other competent authorities

Without undue delay after deprivation of liberty

Where they have been summoned to appear before a court having jurisdiction in criminal matters,

Assistance includes:

Meeting in private and communication with the lawyer

Assisted by a lawyer when they are questioned

During identity parades, confrontations, reconstructions of the scene of a crime

Confidentiality of communication (meetings correspondence etc.)

In any event in detention cases

Individual assessment

Child suspects and accused must be individually assessed to ensure that their specific needs concerning protection, education, training and social integration are taken into account.

The assessment should normally be carried out prior to indictment, but the level of assessment may vary depending on the circumstances of the case, the measures that can be taken if the child is found guilty, and whether the child has recently been assessed

Medical examination

Such examination aims at assessing, in particular, the general mental and physical condition of the child. The results of the medical examination must be taken into account when determining the capacity of the child to be subjected to questioning, other investigative or evidence-gathering acts, or any measures taken or envisaged against the child.

A child deprived of their liberty has the right to medical examination without undue delay, in particular, to assess their mental and physical condition. The examination may be carried out either on the initiative of the competent authorities or on request by the child, the holder of parental responsibility or other appropriate adult, or the child's lawyer.

Recording of interviews

Questioning of children must be audio-visually recorded where this is proportionate in the circumstances of the case

Questioning must be carried out in a manner that takes account of the age and maturity of the child

ARTICLE 7

Right to an individual assessment (Article 7)

Concerning protection, education, training and social integration

ARTICLE 8

Right to a medical examination (Article 8)

Children who are deprived of liberty have the right to a medical examination

Carried out on the initiative of the competent authorities, the child, the holder of parental responsibility or the child's lawyer

ARTICLE 9

Audio-visual recording of questioning (Article 9)

If possible, at least written minutes

Deprivation of liberty

When children are deprived of liberty, they are in a particularly vulnerable position. Deprivation of liberty, in particular longer periods of deprivation of liberty when in pre-trial detention, can prejudice the physical, mental, and social development of children, and lead to difficulties as regards their reintegration into society

Deprivation of liberty includes, in any event, situations in which children are apprehended/arrested, put in police custody, and kept in pre-trial detention

Deprivation of liberty of children should be limited to the shortest appropriate period of time

Most of the remaining provisions of Arts. 10-12 apply in particular to detention, which again, in line with the scope of the Directive, means pre-trial detention. A decision to this effect is normally taken by a judge or a court. In the Directive it is provided that

- ✓ Any detention should be based on a reasoned decision;
- ✓ Detention of children should be subject to periodic review;
- ✓ Recourse should be had, where possible, to measures alternative to detention; and
- ✓ Appropriate measures should be taken relating i.a. to health, education, family life, access to programmes, and respect for freedom of religion or belief.

Limitation of deprivation of liberty (Article 10)

ARTICLE 10

Shortest appropriate period of time
Only as a measure of last resort
Reasoned decision
Periodic review

ARTICLE 12

Specific treatment in the case of deprivation of liberty (Article 12)

Detained separately from adults
Appropriate measures concerning health, education and training

ARTICLE 13

Timely and diligent treatment of cases (Article 13)

Cases have to be treated as a matter of urgency

Protection of privacy

Privacy of children during criminal proceedings should be protected and to this end, Member States should:

- *either* provide that court hearings involving children are usually held in the absence of the public
- *or* allow courts or judges to decide whether to hold such hearings in the absence of the public.

Presence at court hearings

Children should be able to "participate effectively" in the trial, which notably should mean that they should be given the opportunity to be heard and express their views.

ARTICLE 14

Right to protection of privacy (Article 14)

Trials shall usually be held in the absence of public

ARTICLE 15

Right of the child to be accompanied by the holder of parental responsibility during the proceedings (Article 15)

Right to be accompanied by the holder of parental responsibility during court hearings

ARTICLE 16

Right of children to appear in person at, and participate in, their trial (Article 16)



IDENTIFY THE ACOMPANYING CASE
LAW OF THE EUROPEAN COURT OF
HUMAN RIGHTS WITHIN THE SCOPE
OF THE ARTICLE 6 OF THE
CONVENTION

The European Court of Human Rights

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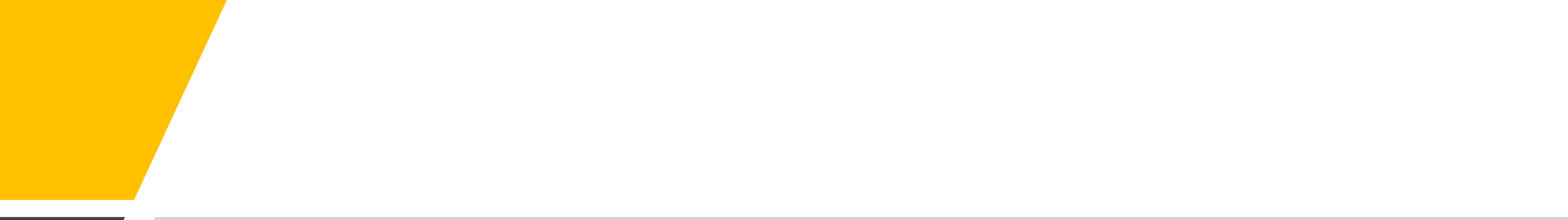
Cases of: SALDUZ V. TURKEY and PANOVITS V CYPRUS

The ECtHR has a vast jurisprudence on children's right

Case of MASLOV V AUSTRIA



RELEVANT DOMESTIC CRIMINAL
PROCEDURAL LAW WITH REGARD TO
THE RIGHTS OF CHILDREN AS
DEFENDANTS IN CRIMINAL
PROCEEDINGS.



Directive 2016/800/EU responds to the need to establish minimum standards and specifically harmonise existing regulations in the different countries relating to the guarantees of suspected and accused minors

‘Minor offences’ are not clearly defined, leaving room for EU Member States to exclude certain offences from the scope of the

The 28th of March 2018 Spain notified the Commission the measures adopted by way of transposition of the Directive